

AMALIA DEUS, M.D.,)
)
 Plaintiff/Appellant,)
)
 VS.)
)
 HAROLD NEVELS, M.D.,)
 RUPERT A. FRANCIS, M.D., and)
 MEHARRY MEDICAL COLLEGE,)
 a Division of George W. Hubbard)
 Hospital,)
)
 Defendants/Appellees.)

Appeal No.
 01-A-01-9507-CH-00284

Davidson Chancery
 No. 93-1227-I

<p>FILED</p> <p>March 27, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

COURT OF APPEALS OF TENNESSEE
 MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CHANCERY COURT OF DAVIDSON COUNTY
 AT NASHVILLE, TENNESSEE

THE HONORABLE IRVIN H. KILCREASE, JR., CHANCELLOR

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REVERSED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
 TODD, P.J., M.S.
 KOCH, J.

OPINION

The only question raised on this appeal is whether Meharry Medical College breached its contract with a medical postgraduate student when it discharged her in March of 1993. The Chancery Court of Davidson County dismissed the complaint, finding that at the time of her discharge the plaintiff did not have a contract for a definite term. We reverse.

I.

On July 1, 1991, Dr. Amalia Deus signed a contract as a first year medical postgraduate with Meharry Medical College for the year July 1, 1991 to June 30, 1992. She immediately entered into the program and started performing under the contract. The contract specified her duties, her pay, her benefits, and the fact that the contract would not be automatically renewed. The copy of the contract in the record contains spaces for the signatures of the Departmental Chairperson, the Associate Dean for Graduate Medical Education, the Director of Medical Affairs, the Hospital Administrator, and the President. Ultimately, all the designated officials signed in the spaces provided: two of them signed on August 16, 1991, one on August 20, and the president signed on October 15, 1991.

Some of the faculty members at Meharry were not satisfied with Dr. Deus' performance. Dr. Harold Nevels, the director of the residency training program, was particularly critical of the way Dr. Deus conducted herself, specifically her resistance to constructive criticism. In August of 1991, Dr. Nevels suspended Dr. Deus for two days for insubordination. On March 31, 1992 Dr. Nevels wrote a letter to Dr. Deus characterizing her performance since July 1 of the previous year as sub-standard. By a copy of the letter he recommended to Dr. Rupert A. Francis, the

chairman of the Department of Family and Preventive Medicine, that Dr. Deus' contract not be renewed for the next year.

Dr. Francis interviewed Dr. Deus and, despite Dr. Nevels' recommendation, offered her a contract for the year beginning July 1, 1992. Dr. Deus and Dr. Francis executed the agreement on June 24, 1992. The form contract -- identical to the contract for the previous year, except for the dates and the compensation -- did not contain any signatures in the spaces designated for the other college and hospital officials. At about the same time, Dr. Francis received another critical letter from Dr. Nevels and one from the head of the Department of Obstetrics and Gynecology. Based on this negative information, Dr. Francis decided to consult the entire faculty on the question of Dr. Deus' employment.

The faculty met on June 30, 1992 and recommended that Dr. Deus be allowed to resign or be put on probation for six months under strict guidelines. Dr. Francis communicated the faculty recommendations to Dr. Deus by letter dated July 13, 1992 and asked her to inform him by July 22, 1992 whether she would resign or accept the other conditions. She accepted probation, and on August 5, 1992 she and Dr. Francis executed still another form agreement covering the period July 1, 1992 to December 31, 1992. This time all the other officials signed in the spaces provided. The college president signed last on September 10, 1992.

The probationary period did not pass without further incidents, but on December 15, 1992 the faculty committee appointed to monitor Dr. Deus' performance recommended that her probation be lifted. A contract dated January 4, 1993 and covering the period from January 1, 1993 to June 30, 1993 was executed by Dr. Deus and Dr. Francis on March 9, 1993. None of the other officials signed it.

Immediately, after March 9, 1993 another storm broke over Dr. Deus. She was evaluated by Dr. Nevels on March 17 and he recommended that her residency be terminated for what he termed concern "about the welfare of patients in your care." The next day Dr. Francis discharged Dr. Deus, informing her that the faculty had made a decision to "discharge you from the Family Practice Residency Program of Meharry Medical College/Hubbard Hospital." The letter concluded by advising Dr. Deus that she could appeal by writing a letter to the Associate Dean for Graduate Medical Education within seven days.

II.

The chancellor held that Dr. Deus was an employee at will since the contract covering the period January 1, 1993 to June 30, 1993 had not been signed by all the designated Meharry officials. We think the evidence preponderates in favor of a finding that Dr. Francis had at least apparent authority to bind the university when hiring or firing residents. Therefore, the contract signed by him and Dr. Deus on March 9, 1993 was effective for its stated term.

The only evidence of Dr. Francis' actual authority is the signature page of each contract containing places for the other officials to sign, and Dr. Francis' post hoc testimony that the contract had to be signed by all the designated officials before it became effective. Yet there is no evidence that Dr. Deus was told her employment depended on the concurrence of the absent subscribing witnesses. When she signed the first agreement on July 1, 1991 she immediately began performing under the contract. Yet, the appellees would have us hold that as late as October 15, 1991, when the last official signed the agreement, she was only an employee at will and was not in the residency program at all.

The record does not contain any published policy or institutional bylaw defining Dr. Francis' power to bind the institution. When he decided to relieve Dr. Deus of her duties he did so on his own. He testified that none of the persons designated on the contract had ever vetoed a decision he made to hire or fire a resident.

"An apparent agent is a person who, whether or not authorized, reasonably appears to third persons, because of the manifestations of another, to be authorized to act as agent for such other." *McCoy v. Willis*, 145 S.W.2d 1020 at 1021, 177 Tenn. 36 at 39 (1940)(quoting *The Restatement of Agency*, Sec. 8, Comment a). An agent's actions under such circumstances are binding on the principal. *Rich Printing Co. v. McKellar's Estate*, 330 S.W.2d 361 (Tenn. App. 1959); *Southern Railway Co. v. Pickle*, 138 Tenn. 238, 197 S.W. 675 (1917). Under the circumstances of this case an objective observer could only conclude that Dr. Francis had the authority to bind the university on the employment of postgraduate physicians.

III.

An employment contract for a definite term can only be terminated for cause. *Nelson Trabue v. Prof. Management Automotive, Inc.*, 589 S.W.2d 661 (Tenn. 1979). The defendants did not insist that they terminated Dr. Deus for cause. Instead they relied solely on their position that Dr. Deus was an employee at will, or that she failed to exhaust her administrative remedies under the employment contract.

Relative to the administrative remedies, the pertinent part of the employment contract provided under the section headed "Evaluations":

3. The Department's faculty members shall meet and review the Postgraduate Physician's evaluations and vote on the disposition of the his/her

status no later than the last working day of February of each academic year. Postgraduate Physicians shall be notified of the disposition of their status no later than the first working day of April of each academic year. Postgraduate Physicians whose contracts do not coincide with the academic year July to June 30 will be notified of the disposition of their status no later than 90 days prior to the end of their contract period.

4. Fair hearing procedures as approved by the Graduate Medical Education Council from time to time shall govern all Postgraduate physician grievances. These procedures shall control, and provide the exclusive means of dispute resolution relating to this agreement, notwithstanding provisions to the contrary in other documents which may apply to postgraduate physicians (including but not limited to hospital bylaws, etc.).

The contract does not have a provision on termination during the term of the contract. It provides that the faculty will meet and vote on each postgraduate physician by the end of February each year and the postgraduates will be notified of their status by the first working day of April. Under a section of the contract labeled "Policy" a postgraduate physician may be suspended by the medical director or the department chairperson for the failure to maintain accurate and current medical records on patients.

We think the contract is ambiguous on whether an administrative remedy is available when a postgraduate physician is summarily dismissed from the program. Dr. Deus did have a right to file a grievance over an unfavorable evaluation (a procedure she had taken advantage of earlier). But the contract does not specifically say that she must file a grievance over her dismissal. We, therefore, hold that the failure to follow the grievance procedure in this case is not a bar to this action.

IV.

Since the lower court did not address the question of damages, we think the cause should be remanded for a consideration of that issue.

The judgment of the court below is reversed and the cause is remanded to the Chancery Court of Davidson County for further proceedings in accordance with this opinion. Tax the costs on appeal to Meharry Medical College.

BEN H. CANTRELL, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

WILLIAM C. KOCH, JR., JUDGE